

**APPENDIX A
TO PUBLIC REPRESENTATIVE'S COMMENTS**

§ 3035.1 Applicability.

The rules in this part apply to market tests of experimental products undertaken pursuant to 39 U.S.C. 3641.

§ 3035.2 Advance notice.

The Postal Service shall file notice with the Commission of its determination to initiate a market test at least 30 days before initiating the market test.

§ 3035.3 Contents of notice.

Notices of proposed market tests shall include:

- (a) The basis for the Postal Service's determination that the market test is governed by 39 U.S.C. 3641, which shall:

- (1) Describe, from the viewpoint of mail users, how the experimental product is significantly different from all products offered by the Postal Service ~~within~~ during the ~~28~~ 28 fiscal ~~years~~ quarters preceding the start of the market test;
- (2) Establish that the introduction ~~or continued offering~~ of the experimental product will not create an unfair or otherwise inappropriate competitive advantage for the Postal Service or any mailer, particularly in regard to small business concerns; ~~and by:~~

(i) Analyzing whether the market test creates an
unfair or otherwise inappropriate competitive
advantage for any mailer, including the Postal
Service;

(ii) Identifying any businesses, qualifying as small
business concerns, that will likely be affected
by the market test; and

(iii) Analyzing the impact of the market test on any small business concern identified in accordance with paragraph (a)(2)(ii) of this section;

- (3) Identify the experimental product as either market dominant or competitive for purposes of the market test; and explain the reasoning for the categorization in accordance with the criteria set forth in 39 U.S.C. 3642(b).

(b) A description of the nature and the scope of the market test that:

- (1) ~~Demonstrates~~Includes a certified statement by a representative of the Postal Service attesting to the accuracy of the information submitted and explaining why the market test is not inconsistent with the requirements of 39 U.S.C. 3641;
- (2) ~~Identify~~ies the beginning and ending dates of the market test;
- (3) Describes the geographic market(s) where the market test may be conducted;
- (4) Estimates the total revenue that is anticipated by the Postal Service for each fiscal year of the market test, including ~~available~~ supporting documentation;
- (5) ~~Provides~~Includes a copy of the proposed description for the Mail Classification Schedule Language with proposed changes in legislative format; and
- (6) Includes a data collection plan for ~~monitoring the performance of~~ the market test, including a description of the specific data items to be collected, ~~as required~~ and the process by 39 CFR which the data will be collected. The minimum data collection requirements are described in paragraph (a) of § 3035.20 of this part.

§ 3035.4 ~~Review~~Docket and notice.

The Commission will establish a docket for each market test initiated under this part-3035, promptly publish a notice in the *Federal Register*, and post the filing on its website. The notice shall:

- (a) Describe the general nature of the proceeding;
- (b) Refer to the legal authority under which the proceeding is to be conducted;
- (c) Identify an officer of the Commission to represent the interests of the general public in the docket;
- (d) Specify a period for public comment; and
- (e) Include such other information as the Commission deems appropriate.

§ 3035.5 ~~Commission action~~Review.

The Commission shall review the Postal Service notice together with any comments for initial compliance with the statutory requirements of 39 U.S.C. 3641, and:

- (a) Find that the market test is consistent with the requirements of 39 U.S.C. 3641; ~~or~~
- (b) Find that the market test is inconsistent with the requirements of 39 U.S.C. 3641 and provide an opportunity to correct the identified deficiencies; ~~or~~
- (c) Find that the market test is inconsistent with the requirements of 39 U.S.C. 3641 and order that the market test not go into effect; or
- (d) Direct other action as the Commission may consider appropriate.

§ 3035.6 Changes in market test.

(a) At least 15 days prior to instituting any change to a market test, the Postal Service shall ~~immediate notify~~ file a notice of the proposed change in the proceeding's docket.

~~(a) of any material changes made to the market test, including, without limitation, adjustments to prices, geographic scope, or termination date.~~

(b) If the proposed change is deemed material by the Commission, the Commission may, in its discretion, notice the filing and provide an opportunity for comment prior to determining whether the proposed change is consistent with the requirements of 39 U.S.C. 3641.

(c) If the proposed change is deemed immaterial by the Commission, the Commission will place a notice of its determination in the proceeding's docket and take no further action.

~~(b)~~(d) If circumstances necessitate a change to a market test on an emergency basis, the Postal Service shall file a notice of the change in the proceeding's docket no more than 7 days after the change is instituted. The notice shall include the circumstances that necessitated the emergency change. The Commission will review the emergency change for consistency with the requirements of 39 U.S.C. 3641.

§ 3035.10 Duration.

A market test may not exceed 24 months in duration unless the ~~Postal Service requests an~~ Commission makes the finding that the extension ~~under~~ is consistent with the requirements of 39 CFR U.S.C. 3641 in accordance with § 3035.11(c) of this part.

§ 3035.11 Extension of test.

(a) The Postal Service may request an extension of the duration of a market test, not to exceed an additional 12 months, if such an extension is necessary to determine the feasibility or desirability of a product being tested. The Postal Service

must file a written request for extension with the Commission at least 60 days before the market test is scheduled to terminate.

(b) The request for extension shall:

(1) Explain why an extension is necessary to determine the feasibility or desirability of the experimental product; by:

(i) Explaining what information or data the Postal Service needs to evaluate the feasibility or desirability of the experimental product,

(ii) Discussing how an extension will provide the Postal Service with the needed information or data, and

(iii) Providing any changes to the data collection plan that will facilitate the collection of the needed information or data;

(2) List the new end date for the market test;

(3) Calculate the total revenue received by the Postal Service from the market test for each fiscal year quarter the market test has been in operation and provide supporting documentation for the calculations;

(4) Estimate the additional revenue that is anticipated by the Postal Service for each fiscal year quarter remaining on ~~prior to the conclusion of the extension period of~~ the market test, including available supporting documentation; and

(5) Provide any additional information necessary for the Commission to evaluate the continued consistency with the requirements of 39 U.S.C. 3641.

(c) The Commission shall review the Postal Service request for extension to ensure that an extension is necessary in order to determine the feasibility or desirability of the experimental product and:

(1) Find that the extension is consistent with the requirements of 39 U.S.C. 3641; ~~or~~

(2) Find that the extension is inconsistent with the requirements of 39 U.S.C. 3641 and provide an opportunity to correct the identified deficiencies;

(3) Find that the extension is inconsistent with the requirements of 39 U.S.C. 3641 and deny the extension; or

(4) Direct other action as the Commission considers appropriate.

§ 3035.12 Cancellation of market test.

(a) The Postal Service may cancel a market test at any time. It shall file a notice of cancellation within the Commission proceeding's docket within 10 days of cancelling the market test.

(b) ~~Pursuant to 39 U.S.C. 3641(f),~~ Sua sponte or upon the request of any party, the Commission may direct the Postal Service to demonstrate that the market test continues to meet the requirements of 39 U.S.C. 3641 and the Commission's rules. ~~The Commission, in its discretion, may provide an opportunity for comments.~~

(1) The Commission will publish a notice in the applicable proceeding's docket setting a deadline for the Postal Service's demonstration of compliance and narrowing the scope of the required demonstration to particular requirements of 39 U.S.C. 3641 and the Commission's rules, if applicable.

(2) The Commission, at its discretion, may provide an opportunity for comments. If an opportunity for comment will be provided, the Commission will include the request for comments and any applicable deadlines in the notice described in paragraph (b)(1) of this section.

(3) The Postal Service's demonstration of compliance should contain any documentation necessary to demonstrate compliance, including but not limited to affidavits, supporting documentation, and supporting workpapers.

(c) Based upon its review, the Commission may:

- (1) Find that the market test is consistent with the requirements of 39 U.S.C. 3641;~~or~~
- (2) Find that the market test is inconsistent with the requirements of 39 U.S.C. 3641 and provide an opportunity to correct the identified deficiencies;~~or~~
- (3) Find that the market test is inconsistent with the requirements of 39 U.S.C. 3641 and cancel the market test;
or
- (4) Direct other action as the Commission may consider appropriate.

§ 3035.15 Dollar amount limitation.

(a) An experimental product may only be tested if total revenues that are anticipated or received by the Postal Service do not exceed \$10,000,000 in any fiscal year, as adjusted for the change in the Consumer Price Index, as specified in 39 CFR 3035.15(d) (\$10 Million Adjusted Limitation). Total revenues anticipated or received may exceed the \$10 Million Adjusted Limitation in any fiscal year if an exemption is granted pursuant to 39 CFR 3035.16.

(b) The Consumer Price Index, ~~as specified in 39 CFR 3010.21(a) and 3010.22(a), is applicable~~ used for calculations under this part is the CPI-U index.

(c) For each fiscal year, the \$10 Million Adjusted Limitation shall reflect the average CPI result during the previous fiscal year calculated as described in 39 CFR 3035.15(d). The Commission shall publish this figure annually, after the close of the fiscal year on its website ~~at~~ (<http://www.prc.gov>).

(d) The calculation of the \$10 Million Adjusted Limitation involves the following steps. First, a simple average CPI-U index was calculated for fiscal year 2008 by summing the monthly CPI-U values from October 2007 through September 2008 and dividing the sum by 12 (Base Average). The resulting Base Average is 214.5. Then, a second simple average CPI-U index is similarly calculated for each subsequent fiscal year by summing the 12 monthly CPI-U values for the previous fiscal year and dividing the sum by 12 (Recent Average). Finally, the annual limitation for the current fiscal year

is calculated by multiplying \$10,000,000 by the Recent Average divided by 214.5. The result is expressed as a number, rounded to the nearest dollar.

(e) The formula for calculating the \$10 Million Adjusted Limitation is as follows: $\$10 \text{ Million Adjusted Limitation} = \$10,000,000 * (\text{Recent Average}/214.5)$.

§ 3035.16 Exemption from dollar amount limitation.

(a) The Postal Service may request an exemption from the \$10 Million Adjusted Limitation by filing a written request with the Commission. In no instance shall the request for exemption exceed the market test dollar amount limitation of \$50,000,000 in any fiscal year, as adjusted for the change in the CPI-U index ~~Consumer Price Index~~, as specified in 39 CFR 3035.16(c) (\$50 Million Adjusted Limitation).

(b) For each fiscal year, the \$50 Million Adjusted Limitation shall reflect the average CPI result during the previous fiscal year calculated as described in 39 CFR 3035.16(c). The Commission shall publish this figure annually, after the close of the fiscal year on its website at (<http://www.prc.gov>).

(c) The calculation of the \$50 Million Adjusted Limitation involves the following steps. First, a simple average CPI-U index was calculated for fiscal year 2008 by summing the monthly CPI-U values from October 2007 through September 2008 and dividing the sum by 12 (Base Average). The Resulting Base Average is 214.5. Then, a second simple average CPI-U index is similarly calculated for each subsequent fiscal year by summing the 12 monthly CPI-U values for the previous fiscal year and dividing the sum by 12 (Recent Average). Finally, the annual limitation for the current fiscal year is calculated by multiplying \$50,000,000 by the Recent Average divided by 214.5. The result is expressed as a number, rounded to the nearest dollar.

(d) The formula for calculating the \$50 Million Adjusted Limitation is as follows: $\$50 \text{ Million Adjusted Limitation} = \$50,000,000 * (\text{Recent Average}/214.5)$.

(e) The Postal Service shall file its request for exemption at least 45 days before it expects to exceed the \$10 Million Adjusted Limitation.

(f) The request for exemption shall:

(1) Explain how the experimental product will:

(i) Benefit the public and meet an expected demand;

- (ii) Contribute to the financial stability of the Postal Service; and
 - (iii) Not result in unfair or otherwise inappropriate competition.
 - (2) Calculate the total revenue received by the Postal Service from the market test for each fiscal ~~year~~quarter the market test has been in operation and provide supporting documentation; and
 - (3) Estimate the additional revenue that is anticipated by the Postal Service for each fiscal ~~year prior to the conclusion of the extension period of~~quarter remaining on the market test, including available any extension period granted by the Commission in accordance with § 3035.11(c) of this part, and provide supporting documentation;
- (g) The Commission shall review the request for exemption for consistency with the statutory requirements of 39 U.S.C. 3641 and:
- (1) Find that the exemption is consistent with the requirements of 39 U.S.C. 3641;
 - (2) Find that the exemption is inconsistent with the requirements of 39 U.S.C. 3641 and provide an opportunity to correct the identified deficiencies;
 - (3) Find that the exemption is inconsistent with the requirements of 39 U.S.C. 3641 and deny the exemption; or
 - (4) Direct other action as the Commission may consider appropriate.

§ 3035.17 Prevention of Market Disruption.

Notwithstanding the \$10 Million Adjusted Limitation or any adjustment granted pursuant to 39 CFR 3035.16, the Commission may limit the amount of revenues the Postal Service may obtain from any particular geographic market as necessary to prevent market disruption as defined in 39 U.S.C. 3641 (b)(2).

§ 3035.18 Filing for permanent product status.

(a) If the Postal Service determines to make an experimental product permanent, it shall file a notice, pursuant to 39 CFR 3020.30, sufficiently in advance so that at least 45 days prior to the market test does not exceed earlier of the \$10 Million Adjusted Limitation date on which it wishes permanent status to begin or any the date on which the Postal Service anticipates exceeding the authorized dollar amount adjusted limitation in any fiscal year.

(b) The Postal Service shall also file a notice of application for permanent status in the market test proceeding's docket. The notice of application for permanent status shall include the applicable docket number(s) for the proceeding evaluating the permanent product.

§ 3035.20 Data collection and reporting requirements.

(a) A notice of a The Postal Service shall file data collection reports in the market test shall describe plans for monitoring the performance of proceeding's docket no more than 40 days after the close of each fiscal quarter during which the market test, including plans to collect volume, revenue, and other data is offered. Data collection reports shall include, at a minimum:

- (1) The revenue by fiscal quarter received to date by the Postal Service from the market test;
- (2) Attributable costs incurred in conducting the market test, including administrative and ancillary costs;
- (3) A quantification of start-up costs incurred to date associated with the market test;
- (4) The Commission may request Volumes of the experimental product by fiscal quarter; and

(b) ~~(5) Any additional data or information or data as it deems appropriate.~~

(c) ~~To assess the potential impact of a market test in a particular geographic market, requested by the Commission may require the Postal Service to report the revenues from the market test for specified geographic markets.~~

~~The Postal Service shall file the results in accordance with any rule of the market test data collection within 40 days after the close of each fiscal quarter during which the market test is offered, or such other period as the Commission may prescribe this part.~~

~~(d)(b)~~ The Postal Service shall file in its Annual Compliance Report information on each market test conducted during the fiscal year pursuant to 39 CFR 3050.21(h).